

### **REMARKS**

Reconsideration and allowance in view of the following remarks are respectfully requested.

Claims 1, 3-7, 9-11, 18, 19 and 22 remain pending. No claims have been further amended, canceled or newly added

### **Disposition of Claims**

In the Summary of the Office Action of January 24, 2006, item 4 states that claims 1-24 are pending and item 4a states that claims 1, 2, 4, 8, 12-17, 20 and 23 are withdrawn from consideration. Applicants wish to point out that claims 1, 3-7, 9-11, 18, 19 and 22 are pending and that claims 2, 8, 12-17, 20 and 23 were canceled without prejudice or disclaimer.

### **Rejection of Claims 1, 3-7, and 9-11**

On page 3 of the Office Action, the Examiner rejected claims 1, 3-7 and 9-11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over published U.S. Patent Application 2002/0007276 to Rosenblatt et al. (“Rosenblatt”). In the discussion of the rejection, the Examiner relied on features allegedly disclosed by Rosenblatt and U.S. Patent No. 5,857,099 to Mitchell et al. (“Mitchell”) to reject the claims. Therefore, Applicants assume that the Examiner meant to reject claims 1, 3-7 and 9-11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rosenblatt in view of Mitchell. Applicants respectfully traverse the rejection.

Independent claim 1 is directed to a method of delivering a multi-media message to a recipient, wherein the multimedia message is created by a sender for delivery by an animated entity. The method includes, among other things, delivering the multi-media message to the recipient with the animated entity speaking the recorded audio message from the sender, wherein the multi-media message is delivered to the recipient upon approval of the text

message from the sender. On page 3 of the Office Action, the Examiner alleged that Rosenblatt, at [0037], lines 17-21, and [0038], lines 1-3, discloses the multi-media message being delivered to the recipient upon approval of the text message from the sender, as required by claim 1. Applicants respectfully disagree.

Rosenblatt, at [0037], lines 11-21 and [0038], lines 1-3, discloses:

An authoring module, through a GUI, provides a set of pre-defined virtual representatives in a virtual representative library and a text editor or sound recorder for generating the message to be voiced and for inserting emotion cues into the text string. The emotion cues are taken from an associated set of cues stored in an emotion library. A player module is provided in conjunction with the director module to preview of the constructed message prior sending it to the intended recipient. The assembled virtual representative selection, message text, and associated emotion cues are stored in a media file.

Once prepared, the media file is streamed to the player module, such as through email, direct network connection, or via media file storage.

Thus, Rosenblatt discloses an authoring module providing a set of predefined virtual representatives and a text editor or sound recorder for generating a message to be voiced and for inserting emoticons into the text string. A player module, in conjunction with a director module, is provided for previewing the constructed message before sending it to an intended recipient.

Applicants assume that the Examiner is broadly interpreting the term “constructed message” to be a text message. Applicants disagree with the Examiner’s interpretation.

Rosenblatt, at [0019], lines 6-10, discloses:

The authoring module is also capable of invoking a player module in order to allow a user to preview the performance of the text with the embedded emotion cues by the selected virtual representative in a separate or integrated window 24.

Thus, Rosenblatt discloses that the authoring module can invoke the player module to play a performance of the text with embedded emoticon cues by a virtual representative. That is, Rosenblatt discloses the user previewing a performance of a virtual representative speaking words of the text and acting in response to emotion cues inserted in the text.

In view of [0019] of Rosenblatt, discussed above, Applicants submit that the reference to “constructed message” in [0037] of Rosenblatt is a reference to a performance by a selected virtual representative speaking the text and acting in response to embedded emotion cues within the text. Rosenblatt does not disclose or suggest the recipient approving of the text.

Mitchell fails to satisfy the deficiencies of Rosenblatt. Therefore, Applicants submit that independent claim 1 is patentable over Rosenblatt in view of Mitchell and respectfully request that the rejection of claim 1 be withdrawn.

Claims 3-6 depend from claim 1 and are patentable over Rosenblatt in view of Mitchell for at least the reasons discussed with respect to claim 1. Therefore, Applicants respectfully request that the rejection of claims 3-6 be withdrawn.

Claim 7 is directed to a method of sending a multi-media message from a sender to a recipient using an animated entity, wherein the sender chooses the animated entity from a group of animated entities. The method includes, among other things, after receiving approval from the sender for the text message, using the text message to coordinate mouth movements for the animated entity.

Applicants submit, for at least the reasons presented above with respect to claim 1, that Rosenblatt and Mitchell do not disclose or suggest receiving approval from the sender for the text message, as required by claim 7. Therefore, Applicants respectfully request that the rejection of claim 7 be withdrawn.

Claims 9-11 depend from claim 7 and are patentable over Rosenblatt in view of Mitchell for at least the reasons discussed with respect to claim 7. Therefore, Applicants respectfully request that the rejection of claims 9-11 be withdrawn.

Further, Applicants submit that claims 6 and 11 are patentable over Rosenblatt in view of Mitchell for reasons of their own. For example, claims 6 and 7 recite that the multi-media message is sent via a wireless network. On pages 4 and 5 of the outstanding Office

Action, the Examiner alleged that Rosenblatt, at [0029], lines 1-5, discloses the multi-media message being sent via a wireless network, as required by claims 6 and 11. Applicants disagree.

Rosenblatt, [0029], lines 1-5, discloses:

One of the intended applications for the presently disclosed invention is to include virtual representatives in Web sites for the reproduction of captured performances that are streamed and played in real time across the Internet or some other network.

Thus, Rosenblatt discloses that performances are streamed and played in real time across the Internet or some other network. It appears that the Examiner is broadly interpreting “some other network” to include a wireless network. Applicants submit that “some other network” only indicates that embodiments of Rosenblatt are not limited to the Internet. Rosenblatt is absolutely devoid of any disclosure or suggestion of sending the multi-media message via a wireless network, as required by claims 6 and 11. Mitchell fails to satisfy the deficiencies of Rosenblatt.

#### **Rejection of Claims 18, 19 and 22**

On page 5 of the outstanding Office Action, the Examiner rejected claims 18, 19 and 22 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,289,085 to Miyashita et al. (“Miyashita”) in view of Mitchell. Applicants respectfully traverse the rejection.

Independent claim 18 is directed to a method of providing a synthesized voice with sender voice characteristics. The method includes, among other things, receiving an audio recording, associated with a message, from a sender and after receiving the audio recording, using an automatic speech recognizer and presenting a text version of the audio recording to the sender for approval.

On page 5 of the outstanding Office Action, the Examiner admitted that Miyashita fails to disclose or suggest after receiving an audio recording, using an automatic speech recognizer and presenting a text version of the audio recording to the sender for approval, as required by claim 18. The Examiner relied on Mitchell, at col. 8, lines 4-8, to disclose or suggest this feature. Applicants submit that there is no suggestion or motivation to combine Miyashita with Mitchell, as suggested by the Examiner.

To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Furthermore, if the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due

consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991). MPEP 2143.01.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

On pages 5 and 6 of the outstanding Office Action, the Examiner stated:

It would have been obvious to one ordinarily skilled in the art at the time of the invention to supplement the teachings of *Miyashita et al.* with after receiving the audio recording, using an automatic speech recognizer and presenting a text version of the audio recording to the sender for approval, as taught by *Mitchell et al.*, in order to allow a handicapped person to create a text message.

Miyashita discloses a voice mail system in which content of electronic text mail may be read in a synthesized voice having a feature inherent to a voice of a sender (see Miyashita, at col. 1, lines 6-9). Thus, Miyashita teaches that a sender may compose an electronic text mail message, may send the message to a recipient, and may have the recipient hear the

electronic text mail being read in a synthesized voice having one or more features inherent to the sender's voice.

Mitchell discloses an apparatus that receives speech recognition data, including recognized words or characters, from a speech recognition engine and corresponding dictated audio data (Mitchell, Abstract, lines 1-4). The recognized words or characters may be displayed and stored in a file, along with links to a corresponding audio component of the audio data (Mitchell, Abstract, lines 4-11).

The Examiner suggested that the motivation to combine the teachings of Miyashita and Mitchell is to allow a handicapped person to create a text message. Applicants submit that a handicapped person may create a text message by using the teachings of Mitchell alone. That is, a speech-to-text dictation system, as taught by Mitchell, would permit a handicapped person to create a text message by simply dictating a message. However, Mitchell does not disclose or suggest sending the text message to a recipient. Miyashita teaches sending an electronic text message and delivering the electronic text message to a recipient in a synthesized voice having one or more features of a sender's voice. Applicants submit that the combination of Miyashita and Mitchell would provide an apparatus for permitting a user to create a text message and deliver the text message to a recipient in a synthesized voice having one or more characteristics of the sender's voice. However, there is absolutely no motivation to combine the references as suggested by the Examiner.

If a handicapped person wished to send a text message, he or she may dictate the message, using the teachings of Mitchell and may send the message via conventional email. There is no motivation to read the text message to the recipient in a synthesized voice. If the recipient of the message is handicapped, for example, visually impaired, it may be advantageous for the visually impaired recipient to have a received text message read in a synthesized voice having characteristics of the sender's voice. However, a sender may simply place a phone call to the visually impaired recipient and leave a voice mail message.

Alternatively, the sender may email an audio file, including a voice mail message, to the visually impaired recipient as an attachment for the visually impaired recipient to play upon receipt. Therefore, there is absolutely no motivation to combine the teachings of Miyashita with those of Mitchell, as alleged by the Examiner.

For at least the above-mentioned reasons, Applicants submit that the Examiner failed to establish a *prima facie* case of obviousness and respectfully request that the rejection of independent claim 18 and dependent claims 19 and 22 be withdrawn.

### **CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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